IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 9949 OF 2004

Smt. Sapna Maity,)
Age 42 yrs, Occ: House wife)
residing at Room no.30,)
3rd floorm, 13F, Chakala Street)
Cross Lane, Mandvi, Mumbai 400 003) ....Petitioner

versus

Harish S. Hariyani)
Occu: Architect,)
Residing at 12/A Sambhav Tirth,)
2 A Bhulabhai Desai Road,)
Mumbai 400 026.)... Respondent.

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Shri J.J.Thakkar for the petitioner.
Smt. Suhasini Mutalik for the Respondent.

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CORAM ; R.M.S. KHANDEPARKAR, J.

DATED; 20TH DECEMBER, 2004.

ORAL JUDGMENT;

1. Heard. Rule. By consent returnable forthwith.

2. The petitioner challenges the impugned order dated 8th October 2004 passed by the court of Small Causes at Mumbai, admitting the documents filed along with the affidavit. Undisputedly the affidavit was filed in accordance with the law comprised under Order 18 Rule 4 of C.P.C. It is the case of the petitioner that the petitioner had objected to the admissibility of the

documents and without considering the objection, the court below has ordered the admission of the documents.

3. Bare perusal of the impugned order disclosses that the trial court has ordered admission of the documents solely on the ground that the evidence adduced by the witness in the form of affidavit is sufficient to admit the documents produced. In otherwords, without considering the documents in question the court below has ordered the admission of the docuemnts solely on the ground that the form of affidavit filed by the witness is sufficient to decide the issue of admissibility of documents. The impugned order apparently discloses total non application of mind by the court below to the point raised by the petitioner as well as the order being totally contrary to the provisiosn of law and the law laid down in that regard by this court in number of decisions. Time and again this court as well as Apex court has held that if the objection is raised in regards to the admissibility of the documents, it is necessary for the court to apply its mind to the objection raised and to pass a speaking order in that regard. Undoubtedly the order need not be lengthy order but the order should disclose the application of mind to the objection sought to be raised and the same should be apparent on the face of

the order itself. Considering the fact that the impugned order nowhere disclosses the application of mind by the court, as well as consideration of the objections sought to be raised by the petitioner to the admissibility of the documents, the impugned order cannot be sustained and the matter is required to be remanded to the trial court to deal with the objections in accordance with the provisionsof law and bearing in mind the law laid down by this court and the Apex court in that regard.

4. The petition therefore succeeds and the impugned order is set aside. The matter is remanded to the trial court to consider the objections raised to the admissibility of the documents filed along with the affidavit as evidence under Order 18 Rule 4 of C.P.C. in accordance with the provisions of law and the rulings by this court and the Apex court in that regard.

5. Rule made absolute in the above terms with no order as to costs.

6. Parties to act on an authenticated copy of this order.

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